

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Kenneth F. Buechler

Serial Number: 10/697,351

Filing Date: 10-29-2003

Title: DIAGNOSTIC DEVICES AND  
APPARATUS FOR THE CONTROLLED  
MOVEMENT OF REAGENTS WITHOUT  
MEMBRANES

Group Art Unit: 1797

Examiner: Lyle Alexander

**CONFIRMATION NO: 7522**

**FILED ELECTRONICALLY ON: FEBRUARY 5, 2010**

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

**REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT**  
**AND**  
**APPLICATION FOR PATENT TERM ADJUSTMENT**  
**UNDER 37 CFR §1.705**

Sir or Madam:

Applicant(s) hereby requests(s) that the Office reconsider the Patent Term Adjustment calculated for this application and adjust the Patent Term Adjustment determination for this application.

This request is made AFTER the date of the Notice of Allowance and is filed ON or BEFORE payment of the issue fee;

--OR--

This request is made within TWO months from the date of issuance of the patent and is accompanied by a Request for a Certificate of Correction.

The statement of facts involved specifying the correct Patent Term Adjustment and the bases for the adjustment are as follows:

- 37 C.F.R. §1.702(a)(1). The Office is required to mail at least one of a notification under 35 U.S.C. §132 or a notice of allowance under 35 U.S.C. §151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. §111(a) or fulfilled the requirements of 35 U.S.C. §371 in an international application:

The date on which the application was filed: \_\_\_\_\_  
The 14 month date on which the Office was to issue an Office Action or Notice of Allowance \_\_\_\_\_  
The actual date on which the first Office Action or Notice of Allowance was mailed \_\_\_\_\_  
The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_ days, when it should have credited \_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(a)(2). The Office is required to respond to a reply under 35 U.S.C. §132 or to an appeal taken under 35 U.S.C. §134 not later than four months after the date on which the reply was filed or appeal was taken:

- Reply

The date of applicant's response to notice of rejection: \_\_\_\_\_  
4 months from the date of response to the notice of rejection \_\_\_\_\_  
The actual date on which the Office replied \_\_\_\_\_  
The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_ days, when it should have credited \_\_\_ days, as illustrated above.

- Appeal

The date on which Applicant's filed completed Appeal Brief: \_\_\_\_\_  
4 months from the date of the appeal brief \_\_\_\_\_  
The actual date on which the Examiner's Answer or Notice of Allowance was mailed \_\_\_\_\_  
The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_ days, when it should have credited \_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(a)(3). The Office is required act on an application not later than four months after the date of a decision by the BPAI, or a decision by a Federal court where at least one allowable claim remains in the application:

The date of decision allowing at least one claim by the BPAI or Federal Court \_\_\_\_\_  
4 months from the date of decision \_\_\_\_\_  
The actual date on which the Office replied \_\_\_\_\_  
The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_ days, when it should have credited \_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(a)(3). The Office is required to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. §151:

The date applicant paid issue fee: \_\_\_\_\_

4 months from the date of issue fee payment \_\_\_\_\_

The actual date on which the patent issued \_\_\_\_\_

The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_\_ days, when it should have credited \_\_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(b). The Office is required to issue a patent within three years from the actual filing date of the application:

The date on which the application was filed \_\_\_\_\_

3 years from the date the application was filed \_\_\_\_\_

The date upon which the patent issued \_\_\_\_\_

The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_\_ days, when it should have credited \_\_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(c). The Office is required to adjust the term of an original patent if the issuance was delayed due to interference proceedings.

The date upon which the interference was declared \_\_\_\_\_

The date upon which the interference ended \_\_\_\_\_

The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_\_ days, when it should have credited \_\_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(d). The Office is required to adjust the term of an original patent if the issuance of the patent was delayed due to the application being placed under a secrecy order.

The date upon which the secrecy order was issued \_\_\_\_\_

The date upon which the secrecy order was removed \_\_\_\_\_

The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_\_ days, when it should have credited \_\_\_\_ days, as illustrated above.

- 37 C.F.R. §1.702(e). The Office is required to adjust the term of the original patent if the issuance was delayed to review by the BPAI or Federal court, if the decision reversed an adverse determination of patentability.

The date upon which the application was appealed to the BPAI or Federal Court \_\_\_\_\_

The date upon which the BPAI or Federal Court issued a decision reversing an adverse determination of patentability \_\_\_\_\_

The difference for which Applicant should received credit \_\_\_\_\_

The Office credited Applicant \_\_\_\_ days, when it should have credited \_\_\_\_ days, as illustrated above.

- 37 C.F.R. §1.704. The Office is entitled to adjust the sum of the patent term adjustment for Applicant delay. Applicant believes that the Office incorrectly deducted patent term adjustment.

Applicant believes that the Office erroneously deducted days for Applicant delay based on the response to the Non-final Rejection mailed \_\_\_\_\_. The three month period for response ended on \_\_\_\_\_; however, a complete response was not filed until \_\_\_\_\_. Applicant believes that this deduction should be adjusted to \_\_\_\_\_ days.

- 37 C.F.R. §1.704. The Office is entitled to adjust the sum of the patent term adjustment for Applicant delay. Applicant believes that the Office incorrectly deducted patent term adjustment.

Applicant believes that the Office erroneously deducted 316 days for Applicant delay based on the Request for Continued Examination (RCE) and Information Disclosure Statement filed August 5, 2008. It appears that 316 days is the time period between the Reply Brief filed on September 24, 2007 and the RCE filed August 5, 2009. However, Applicant believes that no deduction for Applicant delay is warranted and Applicant requests that this deduction be adjusted to 0 days.

- 37 C.F.R. §1.704. The Office is entitled to adjust the sum of the patent term adjustment for Applicant delay. Applicant believes that the Office incorrectly deducted patent term adjustment.

Applicant believes that the Office erroneously deducted \_\_\_ days for Applicant delay based on the Information Disclosure Statement filed on \_\_\_\_\_ after the Amendment filed on October 1, 2008. Applicant believes that this deduction should be adjusted to \_\_\_ days.

- 37 C.F.R. §1.704(c)(10). The period for adjustment for a submission under §1.312, or other paper, after the notice of allowance, is the lesser of the number of days beginning on the date of the amendment, or other paper, under §1.312 and ending on the mailing date of the Office action or notice in response to the amendment or such other paper, or four months. In this instance, the submission under §1.312, or other paper, was mailed \_\_\_\_\_ and the Office action or notice was mailed \_\_\_\_\_. Therefore the amount of time deducted should be \_\_\_\_, not \_\_\_\_ as calculated by the Office. Applicants request a credit of \_\_\_ days.

- 37 C.F.R. §1.704(d). The Office is entitled to reduce the period of patent term adjustment for Applicant delay:

Applicant's Information Disclosure Statement dated \_\_\_\_ was accompanied by a statement under §1.704(d) that each item of information contained in the statement was first cited in a communication from a foreign patent office in a counterpart application less than 30 days prior to filing the information disclosure statement.

Thus, applicant should be credited \_\_\_ days which were erroneously deducted from the patent term for applicant's delay.

- Fee Authorization.* The Commissioner is hereby authorized to charge the petition fee under 37 C.F.R. §1.18(e) of \$200.00 and charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 23-2415 (Docket No. 36671-716.302).

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI

By: 

Mark D. McNemar, Esq., Ph.D.  
Reg. No. 64,904

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650 Page Mill Road  
Palo Alto, CA 94304-1050  
(650) 493-9300  
Customer No. 021971